

BANKING DEPARTMENT
64B Old Suncook Road
Concord, New Hampshire 03301
Tel. 271 - 3561

CHAPTER Ban 3700 DEBT ADJUSTERS

Statutory Authority: RSA 399-D:14

PART Ban 3701 LICENSE APPLICATION PROCEDURE

Ban 3701.01 General Application Requirements.

- (a) Form 399-D-1 shall be used for both new and renewal applications.
- (b) An application shall be submitted for each location from which the licensee shall conduct a debt adjuster business.
- (c) A renewal application shall be accompanied by a license fee of \$100.00.
- (d) An application for an initial license shall be accompanied by a \$50.00 investigation fee.
- (e) After the investigation is completed and an initial license is approved by the commissioner, new applicants shall submit a \$100.00 license application fee. Such fee shall be received by the department prior to the issuance of the license.
- (f) Applicants shall be given written notice of license application approval or denial in accordance with RSA 541-A.
- (g) Form 399-D-1 shall be available from the office of the bank commissioner, 64B Old Suncook Road, Concord, New Hampshire, 03301.

Source. #6278, eff 6-27-96

Ban 3701.02 Form 399-D-1, Debt Adjuster Application.

- (a) All applicants for a debt adjusters license shall complete banking department Form 399-D-1, "Application for a Debt Adjusters License."
- (b) Applicants shall supply on or with Form 399-D-1 the following:
 - (1) Whether application is for a new or a renewal license;
 - (2) The license year for which application is made;
 - (3) The date of application;
 - (4) The name of the applicant;
 - (5) The location for which application is made;
 - (6) The trade name of the applicant, including a copy of registration of such trade name with the New Hampshire secretary of state;
 - (7) The mailing address of the applicant;

- (8) The applicant's telephone number;
- (9) Whether the applicant is an individual, partnership, corporation, association or other form of organization;
- (10) If the applicant is a corporation, a copy of the applicant's certificate of incorporation from the applicable regulatory body of the state of incorporation;
- (11) If the applicant is a corporation incorporated in a state other than New Hampshire, a copy of the applicant's registration as a foreign corporation issued by the New Hampshire Secretary of State;
- (12) The names, titles, other occupations and residence addresses of the owners, partners, directors, trustees and officers of the applicant;
- (13) Name, address and description of other businesses, if any, engaged in by the applicant in addition to the debt adjuster business;
- (14) The name and residence address of the manager or person in charge of the business location for which application is made;
- (15) The total number of offices/locations of the business operated under the same trade name, including the street address of each location;
- (16) Whether the applicant or any officer, director, partner, owner, employee, manager or agent of the applicant has ever been convicted of a misdemeanor or felony, including details of such convictions;
- (17) The name, residence address, and occupation of each shareholder of the applicant, if the applicant is a corporation;
- (18) The names and addresses of those individuals, firms, corporations, or other entities having a financial interest in the applicant's business;
- (19) For a license renewal application, a current financial statement issued by a public accountant or certified public accountant, including a balance sheet and the most recent annualized profit and loss statement for the applicant;
- (20) A copy of the proposed debt adjustment contract to be used by the applicant;
- (21) A copy of the partnership agreement, if applicable;
- (22) A \$10,000 surety bond payable to the state of New Hampshire issued by an insurance company authorized to do business in this state by the New Hampshire insurance department;
- (23) Whether the applicant or any owner or officer of the applicant has ever been adjudged a bankrupt;
- (24) Whether the applicant has ever been the subject of receivership proceedings;
- (25) Whether the applicant or any owner or officer of the applicant has ever made an assignment for the benefit of creditors;
- (26) Whether the applicant or any owner or officer of the applicant has ever been denied any license by the New Hampshire banking department;

- (27) Whether the applicant or any owner or officer of the applicant has ever been denied any license, other than a driver's license, by any other agency of this or any other state;
- (28) Whether the applicant or any owner or officer of the applicant has ever had a license, other than a driver's license, revoked, suspended or had any fines or other sanctions imposed after such license was granted by this or any other state;
- (29) Whether any litigation is pending against the applicant, or pending against any owner or officer of the applicant in their capacity as such;
- (30) Whether any litigation is pending against any firm or company of which the applicant, or any owner or officer of the applicant, was a partner, officer, director or manager during the time such cause of action arose;
- (31) Whether the applicant or any owner or officer of the applicant was ever an owner, partner, officer or director of any firm or company which was adjudged a bankrupt or for which a receiver was appointed either during the time, or within one year after the applicant or such owner or officer was connected with such firm or company;
- (32) Whether the applicant or any owner or officer of the applicant has ever been named as a defendant in any litigation of any nature arising out of the debt adjustment business;
- (33) Whether the applicant or any owner or officer of the applicant has ever defaulted in the payment of money collected for others;
- (34) An affirmative answer to any provision in Ban 3702.02 (b)(21) through (b)(34) shall require the applicant to provide an explanation of the circumstances;
- (35) A notarized statement signed by the applicant or an authorized owner or officer of the applicant affirming that the statements made on Form 399-D-1 are true, correct and complete;
- (36) A notarized consent to service of process naming the commissioner as the applicant's attorney for purposes of service of process in any action arising out of the applicant's debt adjustment activities in this state;
- (37) A resume showing the employment history of the manager and/or executive director of the applicant; and
- (38) A notarized authorization made by each owner, officer, director, partner or trustee of the applicant authorizing the New Hampshire banking department to request and obtain from any and all law enforcement officials reports of convictions for felonies and/or misdemeanors committed by such individual, including the following information required by the New Hampshire state police for the processing of such requests:
- a. Drivers license number and issuing state;
 - b. Date of birth;
 - c. Tax identification number or social security number;
 - d. Address; and
 - e. Hair and eye color.

Ban 3701.03 License Denial. A license application shall be denied if any of the following apply to the applicant or the applicant's owners, principals, partners, or officers:

- (a) Outstanding tax lien;
- (b) Charge-off or write-off of any debt;
- (c) Denial or revocation of a license for debt adjustment, or the lending of funds, or the extension of credit by this or any other state;
- (d) Failure to fully disclose or provide true and accurate information on Form 399-D-1, or any attachments thereto; and
- (e) Failure to meet standards set forth in RSA 399-D:4.

Source. #6278, eff 6-27-96

PART Ban 3702 OPERATIONS

Ban 3702.01 Hours of Operation.

- (a) Each licensee shall file with the commissioner a written schedule of days and hours during which the licensee's office shall be open.
- (b) Changes in such schedule shall be reported in writing to the commissioner, and to each debtor under contract with the licensee, no later than 14 days before such change is to become effective.

Source. #6278, eff 6-27-96

Ban 3702.02 Debtor's Trust Account.

- (a) Licensees shall establish a debtor's trust account in a federally insured depository institution located in New Hampshire.
- (b) Licensees shall at no time permit any debtor's trust account to exceed federal deposit insurance coverage limitations.
- (c) Licensees shall not withdraw funds in any amount from the debtor's trust account required by RSA 399-D:9, except:
 - (1) For distribution to creditors of the debtor when the contract with the debtor so permits; or
 - (2) For the withdrawal of earned prorated fees, if permitted under the contract with the debtor.
- (d) Any charges or fees assessed against said account by the depository institution at which the account is established shall be reimbursed to the account by the licensee at least once each calendar month.
- (e) Licensees shall not commingle other funds with funds received from debtors deposited in the debtor's trust account established under (a) above.
- (f) Licensees shall retain all monthly account statements for debtors' trust accounts for 7 years which shall be available to bank examiners during an examination.

Source. #6278, eff 6-27-96; ss by #7438, eff 1-27-01

Ban 3702.03 Cancellation of Contract by Licensee.

- (a) A licensee who cancels a contract with a debtor pursuant to RSA 399-D:11, IV shall:
 - (1) Provide the debtor with 10 days written notice prior to such cancellation;
 - (2) Provide the debtor with a written statement of his/her account no later than 5 business days following the effective date of such cancellation; and
 - (3) Return remaining funds of the debtor in the form of a cashier's or certified check made payable to the debtor no later than 10 business days after the effective date of such cancellation.

Source. #6278, eff 6-27-96

Ban 3702.04 Location.

(a) Upon the effective date of this section, no license to engage in a debt adjuster business shall be issued to any person or entity unless such person or entity maintains an office located in this state from which such debt adjuster business is conducted.

(b) Debt adjuster licensees shall maintain all contracts with New Hampshire debtors and all documents required to be retained by the licensee pursuant to RSA 399-D at the licensee's New Hampshire location.

(c) This section shall apply to any person who engages in a debt adjustment business, regardless of whether such person claims to act as principal, agent, broker, employee, or in any other capacity whatsoever.

Source. #6389, eff 11-27-96

Ban 3702.05 Choice of Law.

(a) A written contract between a licensee and a debtor pursuant to RSA 399-D:8 shall contain a provision that the contract shall be governed by the laws of the state of New Hampshire.

(b) A choice of law provision that complies with (a) above shall not be waived.

(c) A choice of law provision shall not be enforceable if it states that a contract shall be governed by the laws of a foreign state.

Source. #7439, eff 1-27-01

Ban 3702.06 Use of Agents or Brokers Prohibited.

(a) Licensees shall not conduct business through brokers or independent agents.

(b) Employees of a licensee shall be separately licensed pursuant to RSA 399-D.

(c) The definition of employee for purposes of (b) above shall be the same as defined by the U.S. Internal Revenue Service.

Source. #7440, eff 1-27-01

